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IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

NO. 605 15

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

PETITION OF EMPLOYER FOR LEAVE TO INTERVENE

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NO. 609

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PETITION OF EMPLOYER FOR LEAVE TO INTERVENE

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

NOW COMES the Jefferson Standard Broadcasting Company, hereinafter referred to as the Company, and respectfully presents to the Court:

1. That it is a North Carolina corporation having its principal office and place of business in Charlotte, North

Carolina where it is engaged in the business of radio and television broadcasting.

2. That it is the employer involved in the controversy which has been presented to this Court by the above-entitled Petition for Writ of Certiorari.

3. That it has a direct, substantial and urgent interest in the outcome of this controversy.

4. That originally this controversy was a proceeding under the National Labor Relations Act, as amended, brought by the National Labor Relations Board against the Company and in which this Company and the Board were the only active participants, but that more recently this controversy has been carried on as if it were a concern only of the Board and of Local Union No. 1229 of the International Brotherhood of Electrical Workers, above-named.

5. That more specifically, in its aforesaid proceeding against the Company, the Board, on June 26, 1951, issued a Decision and Order which was in part favorable and in part adverse to the Company; that thereupon the Company proceeded to comply with such parts of the said Decision and Order as were adverse to it; that several months thereafter, namely on November 3, 1951, as the Company later learned, Local Union No. 1229 of the International Brotherhood of Electrical Workers filed a petition for review of the Board's decision and order—not in the United States Court of Appeals for the Fourth Circuit, where the Company conducts its business, where the above-named Union carries on its affairs, where the controversy arose and where the Board hearings in the case were held—but in the United States Court of Appeals for the District of Columbia; that the Company was not made a party to the said review proceeding in the United States Court of Ap-

peals for the District of Columbia, was never served with a copy of the petition for review, nor in any way apprised of the existence of said review proceedings or any of the developments therein, except that on or about December 15, 1951 the Company received from the Board a copy of certain papers indicating that the Board was responding in said Court to a petition for review filed by the aforesaid Union; that the Company received knowledge of the decision of the Court of Appeals upon the said petition for review only by noticing an account thereof in the newspapers; that thereupon the Company's attorneys twice wrote to the Board requesting information as to whether it was the intention of the Board to petition this Court for a Writ of Certiorari in the matter; but that neither the Company nor its attorneys received answer to this inquiry until, on February 27, 1953, the Company's attorneys received from the Board a copy of its Petition for Writ of Certiorari, filed herein on February 17, 1953.

6. That, as the Company is informed and believes, the aforesaid proceeding in the Court of Appeals for the District of Columbia was fatally defective in that Local Union No. 1229 of the International Brotherhood of Electrical Workers did not have, and should not have been allowed, any standing to seek or obtain review of the aforesaid decision and order, no decision or order having been rendered against it by the Board.

7. That, as the Company is informed and believes, the aforesaid proceeding in the Court of Appeals for the District of Columbia was further fatally defective in that, as set forth above, the Company was never served with the petition for review therein and was never in any way made a party to said proceeding; that it being upon the Company that the entire burden of any decision supporting the complaint will fall, the Company was as truly a necessary

party in the review proceeding before the Court of Appeals as it was in the proceeding before the Board; that the directives which have been sought and are being sought in this controversy are specifically against this Company, and no other person or party than this Company; that more particularly the directives being sought are that *this Company* shall be required to take a number of discharged employees back into its employment and that *this Company* shall be required to pay to them large sums of money in the form of back pay accumulating since their discharge and that *this Company* shall be required to recognize and deal with the Union named above; that this Company thus has an obvious, direct and urgent interest in this controversy and should have been served with the petition for review in the proceeding before the Court of Appeals and should have been made a party to said proceeding.

8. That by reason of its clear and direct legal interest in the outcome of this controversy, as hereinabove shown, the Company should be allowed to intervene in the present proceeding in this Court.

9. That moreover, as the Company is informed and believes and as appears from the Petition for Writ of Certiorari herein, the Board, which has filed said Petition for Writ of Certiorari, does not intend to urge upon this Court that the proceeding in the Court below was defective in the respects shown above, namely, in that Local Union No. 1229 of the International Brotherhood of Electrical Workers had no standing to obtain review of the Board's Decision and Order and in that this Company was not served with the petition for review in said proceeding nor in any way made a party thereto; that therefore this Company should be allowed to intervene herein, not only because of its clear and direct legal interest in the outcome of the controversy, but also in order that it may present to

the Court the aforesaid issues bearing upon the validity of the proceeding in the Court below, which otherwise will not be presented to this Court.

10. That as to the issue of this controversy upon the merits, the decision of the Court below is erroneous and erroneous in an area which is of fundamental importance to the proper interpretation and administration of the National Labor Relations Act; that the Court below has made a broad and far-reaching ruling that under Section 7 of the National Labor Relations Act:—*An employer is powerless to act against employees for anything which they may do concertedly, unless their actions amount to a violation of some State or Federal law;* that the effect and extent of the ruling of the Court below is that if employees act in concert but not in positive violation of law, then no matter what may be their injury to the interest of their employer, their disregard of his instructions or their disservice to the purposes of their employment, the employer may take no action against them; that such proposition is not legally tenable and is not justified, under any proper interpretation of the National Labor Relations Act.

11. That the factual circumstances of the present controversy, as established by the record before the Board, are, as follows:

In the Summer of 1949 the Company, through the exertion of great effort and the expenditure of large sums of money, was initiating in Charlotte, North Carolina, and the surrounding area, the broadcasting of television. While the Company was in the midst of this effort, certain of the Company's technical or engineering employees began to distribute to the general public a leaflet or handbill ridiculing the Company's television operation.

The content of this handbill was untrue in general and in particular—in its tenor and in its specific statements. It announced that all of the Company's television programs were "on film," which was untrue. It declared that "no local programs" were presented by the Company, which was untrue. It represented that by the expenditure of more money the Company could have been presenting any programs which were being presented elsewhere in the larger Cities, which was untrue. It conveyed a general charge that the Company's television operations were "second-class" and proposed the idea that the Company regarded the City and community which it served as "second-class" and, therefore, only entitled to "second-class" television operation on the part of the Company.

This handbill was written by the Business Manager of the Local Union above named and a representative of the International Union. It was approved by the Executive Committee of the Local Union above named, which Committee was composed of seven of the employees who were later discharged by the Company. It was distributed by these seven and two other of the Company's employees. Five thousand copies of the handbill were distributed at the four corners of the main square at the intersection of Trade and Tryon Streets in the City of Charlotte. "Hundreds" were scattered over the public sidewalks. Batches of the handbill were thrown into the open windows of City busses. They were handed out in restaurants and were received in the mail, both at Charlotte and in surrounding towns and cities.

During the period when the handbill was being distributed the Company learned of a letter which had been written by the Business Manager of the Local Union above named and approved by the Union Executive

Committee and mailed to the Federal Communications Commission and which said:—"We feel that the local outlet is not utilizing the full facilitics as granted in the license. We, therefore, respectfully request, unless they take advantage of the situation, that the television channel be granted to some one who will." The suggestion was thus being made that the Company's license to operate in the field of television be revoked, an action which, if it had developed, would have inflicted a staggering financial loss upon the Company and upon many other businesses which had made large investments in reliance upon the Company's initiation of television broadcasting in the Charlotte area.

At the time of the distribution of the aforesaid handbill and the writing of the aforesaid letter, the Local Union above named and the Company were engaged in a labor dispute, in the sense that they had been unable to agree upon the renewal terms of a collective bargaining contract. The employees in question had, however, not gone on strike but were continuing to work and still drawing their regular pay from the Company. It was, moreover, conceded by the General Counsel for the Board that the Company had at all times and in all respects bargained "in good faith" with the Union in an effort to arrive at mutually agreeable terms for the renewal of the contract between the Company and the Union.

The aforesaid handbill, however, and the aforesaid letter to the Federal Communications Commission did not, either of them, make any mention of any labor dispute and from them a recipient would have no knowledge whatever that any such dispute existed. The handbill did not even bear the name of the Union. Neither document in any way referred to any controversy over

wages, hours or conditions of employment nor to any kind of concerted activity by employees for purposes of "mutual aid or protection" in a labor dispute.

Literature relating to the aforesaid labor dispute had previously been put out by the Union but none of such literature had had as intensive and wide-spread distribution as the aforesaid handbill. It was distributed by persons who in no way identified themselves as employees, or representatives of employees, disputing with their employer. Many people reading the handbill had no knowledge and no realization that they were being propagandized or "persuaded" in a labor dispute—for they were not addressed by a labor organization, nor appealed to in behalf of employees as against an employer, nor told of anything being either "unfair" or disagreed or in controversy in the realm of employee-employer relations. Readers of the leaflet were merely informed that the television being offered by the Company was strictly second-rate and that the Company was giving inferior service to the City and community in which it operated. The document told of no conflict, and sought no aid in any conflict between the Company and its employees. It sought to turn the public against the Company—not as aid to employees engaged in labor dispute with the Company—but purely upon the ground that the public ought to be dissatisfied with the quality of the Company's product.

The employees who distributed the handbill themselves realized that in doing so they were departing from advertising their labor dispute and from seeking to put pressure on the Company by information to and persuasion of the public with respect to their dispute. A member of the Union's negotiating committee and former President of the Local Union testified:—"I didn't ap-

prove of it (the handbill in question) but I did distribute it . . . I did not approve of that handbill." Another of these employees testified that he "didn't approve of that leaflet" and that as soon as he read it, he said that he "didn't want to distribute any of them."

The President of the Local Union testified that two days before the distribution of the handbill was begun, a representative of the International Union wrote and he, the President of the Local Union, signed and mailed a letter to all of the Company's approximately one hundred employees telling them that:—"The organization has plans to apply more pressure than has been used to date. We are forced to use stronger means . . ." He further testified, and the Board's General Counsel stipulated, that the greater "pressure" and the "stronger means" referred to in the letter was the handbill in question.

The nature and content of the handbill were such that it attracted wide-spread attention and aroused general discussion. The Board's General Counsel conceded that it "was generally discussed by the public" and that "hundreds" of business people "contacted" the Company's General Sales Manager "and asked him about it."

The distribution of this handbill had an immediately damaging and drastic effect upon television business in the Charlotte area. Those whose interests were connected with the development of television in this territory quickly expressed their concern to the effect that this handbill would "hurt the television business in Charlotte." A wholesale distributor of television receiving sets testified that his Company's sales of such sets in Charlotte dropped sixty-nine per cent in September

as compared to August, whereas the normal pattern would have been for it to rise from August to September. Another testified that although he reduced prices radically, his sale of television sets "hit the bottom in September when it should have been picking up" and were a "tremendous flop" in contrast to sales of television sets in other Southern cities. He testified that he only relieved this "distressing experience," by shipping much of his inventory to distributors elsewhere. In the midst of this, the Company's operations were financially, for the first time in eighteen years, deep "in the red."

The employees who distributed the aforesaid handbill intended that it should have, and calculated that it would have, the effect which it had. The Business Manager of the Local Union above named and the representative of the International Union, who, as stated above, together composed the document, upon presenting a copy of it to the representative of a radio service company, said:—"We're giving you this so that when TV sales drop off, you'll know the reason."

The employees whom the Company discharged were, moreover, planning to make further public attacks of the same, and even more extreme, nature upon the Company. The Board's General Counsel so stipulated. As four of these employees on one occasion handed copies of the leaflet to the Company's Program Manager on the public street, one of them said to him:—"If you think this is tough, wait until you see what we have coming up." One of them, as he presented a copy to the Company's Promotion Manager, said:—"Here, show this to (the Company's Vice-President and General Manager) and tell him that there are four or five more coming that are stronger than this." The Business Manager of the Local Union, who was one of the employees

distributing the leaflet, told a barber, after bringing one of the leaflets into his barber shop, "before we are through we will break WBT (the Company)."

In the light of all of the foregoing facts and circumstances, the Company discharged the employees who are referred to above. Whereupon, the head of the International Union said to the Company's General Manager:—"I don't blame you. I would have done the same thing."

12. That upon the facts and circumstances outlined above, the Board decided that, whether the actions of the employees in question were violative of any law or not, there was nothing in the National Labor Relations Act depriving the Company of the right to discharge them; that such decision was correct and that the ruling of the Court of Appeals to the contrary is erroneous.

WHEREFORE, the Jefferson Standard Broadcasting Company prays that it be allowed to intervene in this cause and that a Writ of Certiorari be granted herein to the end that this Court may review the decision which has been rendered by the Court below.

JEFFERSON STANDARD
BROADCASTING COMPANY

By: Whiteford S. Blakeney
Attorney

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CHARLES H. CRUTCHFIELD, being duly sworn, deposes and says that he is an officer of the Jefferson Standard Broadcasting Company above named, to wit, its Vice-President and General Manager; that he knows the contents of the foregoing Petition for Leave to Intervene and that the same is true to his own knowledge, except as to such matters as are therein stated upon information and belief and as to these he believes the said Petition to be true.

Charles H. Crutchfield

Subscribed and sworn to before me,
this the 9th day of March, 1953.

Ivie H. Gulledge
Notary Public.

(Seal)

My commission expires May 16, 1953.